

STATE OF MICHIGAN
COURT OF APPEALS

JAMES E. VAUGHN and JEAN E. VAUGHN,

Plaintiffs-Appellants,

v

FORD MOTOR COMPANY, JAMES
POLLICELLI and THE WACKENHUT
CORPORATION,

Defendants-Appellees.

UNPUBLISHED

October 25, 2005

No. 261905

Wayne Circuit Court

LC No. 03-341508-NO

Before: Hoekstra, P.J., and Gage and Wilder, JJ.

PER CURIAM.

In this action sounding in both tort and contract, plaintiffs appeal as of right the trial court's orders granting summary disposition in favor of defendants. We affirm.

During a break from his duties as an employee of Rouge Steel Company (Rouge), plaintiff James Vaughn¹ was shot by an unknown assailant while seated in a vehicle parked on property owned by defendant Ford Motor Company (Ford).² It is not disputed, however, that a portion of the lot in which plaintiff was shot was owned by Rouge, which had contracted with The Wackenhut Corporation (Wackenhut) to provide security for its employees and property. As a result of the shooting, plaintiffs' filed the instant suit alleging negligence and third-party beneficiary claims against each of the defendants. The trial court, however, dismissed plaintiffs' complaint after concluding that defendants' owed plaintiff no legal duty to prevent or otherwise protect him against the shooting.

This Court reviews de novo decisions on motions for summary disposition. *MacDonald v PKT, Inc*, 464 Mich 322, 332; 628 NW2d 33 (2001). Although the trial court did not identify

¹ Because plaintiff Jean Vaughn's claim for loss of consortium is derivative, the singular term "plaintiff" shall hereinafter refer only to plaintiff James Vaughn.

² Plaintiff did not distinguish between his claims against Ford Motor Company and its security supervisor at this property, defendant James Pollicelli. Consequently, both Ford and Pollicelli will be hereinafter collectively referred to as "Ford."

the particular subrule under which it granted summary disposition, it is apparent that the motion was decided under MCR 2.116(C)(10) because the trial court's consideration went beyond the parties' pleadings. A motion for summary disposition pursuant to MCR 2.116(C)(10) tests the factual support of a claim. *Id.* In evaluating a motion for summary disposition brought under this subsection, a trial court considers affidavits, pleadings, depositions, admissions, and other evidence submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. *Maiden v Rozwood*, 461 Mich 109, 120; 597 NW2d 817 (1999). Where the proffered evidence fails to establish a genuine issue regarding any material fact, the moving party is entitled to judgment as a matter of law. *Quinto v Cross & Peters Co*, 451 Mich 358, 362; 547 NW2d 314 (1996).

Plaintiff argues that the trial court erred in granting summary disposition of his negligence claim against Ford on the ground that Ford owed plaintiff no affirmative duty to protect him while on Ford property.³ We disagree. Whether a defendant owes a duty to a plaintiff is a question of law reviewed de novo on appeal. *Fultz v Union-Commerce Assoc*, 470 Mich 460, 463; 683 NW2d 587 (2004).

The specific duty owed by a land owner to those who enter onto its property depends on the status of the visitor as either a trespasser, licensee, or invitee. *Stanley v Town Square Coop*, 203 Mich App 143, 146-147; 512 NW2d 51 (1993). A landowner owes a licensee a "duty only to warn the licensee of any hidden dangers the owner knows or has reason to know of, if the licensee does not know or have reason to know of the dangers involved. The landowner owes no duty of inspection or affirmative care to make the premises safe for the licensee's visit." *Stitt v Holland Abundant Life Fellowship*, 462 Mich 591, 596; 614 NW2d 88 (2000). In contrast, a landowner owes an invitee both a duty "to warn the invitee of known dangers" and to "make the premises safe." *Id.*

Here, plaintiff argues that he was an invitee of Ford Motor Company at the time he was shot and that, therefore, Ford owed him a duty to make its parking area safe. However, to be an invitee, a plaintiff's presence on the defendant's premises must be related to an activity that is of some tangible benefit to the defendant premises owner. *White v Badalamenti*, 200 Mich App 434, 436; 505 NW2d 8 (1993). Where the person's presence on the land benefits only that person and not the landowner, the person is merely a licensee. See, e.g., *Berry v J & D Auto Dismantlers, Inc*, 195 Mich App 476, 480; 491 NW2d 585 (1992); see also *Stitt, supra* at 596 ("[a] 'licensee' is a person who is privileged to enter the land of another by virtue of the possessor's consent"). In this regard, plaintiffs assert that as an employee of Rouge, plaintiff's presence at the Ford lot was "beneficial" to Ford because Ford had business dealings with Rouge. *White, supra*. Plaintiffs have failed, however, to offer any evidence to support its claim of a business relationship between Ford and Rouge. See MCR 2.116(G)(4). Moreover, even assuming such a relationship exists, the evidence indicates that while Ford did not object to Rouge employees parking in its section of the lot, such use by the employees of Rouge was

³ Because plaintiff does not challenge the dismissal of his third-party beneficiary claim against Ford Motor Company, we do not address that matter on appeal.

permissive, rather than by invitation. See *Alvin v Simpson*, 195 Mich App 418, 420; 491 NW2d 604 (1992) (a licensee is “a person who enters on or uses another’s premises with the express or implied permission of the owner or person in control thereof”), quoting *Cox v Hayes*, 34 Mich App 527, 532; 192 NW2d 68 (1971); Cf. *Stitt, supra* at 596 (“[a]n invitee ‘is a person who enters upon the land of another upon an invitation . . .’”), quoting *Wymer v Holmes*, 429 Mich 66, 71 n 1; 412 NW2d 213 (1987). Indeed, plaintiff testified at deposition that he had never been instructed regarding where he could or could not park within the shared lot, and that he simply tried to park each day as close to the Rouge building entrance as possible. Because the evidence demonstrates no tangible benefit to Ford from plaintiff’s permissive use of the lot, we conclude that plaintiff was a licensee on the premises and was not entitled to a duty of care akin that afforded to an invitee. Consequently, Ford owed plaintiff no duty to provide plaintiff a safe parking area, and summary disposition of his claim for negligence against Ford was, therefore, proper.

Plaintiff also argues that by providing for its own security patrols of the lot in an express effort “to provide a safe and secure environment for [Ford] employees and visitors,” Ford voluntarily assumed the performance of a duty to protect him, which it was required to perform carefully. See, e.g., *Sponkowski v Ingham Co Rd Comm*, 152 Mich App 123, 127-128; 393 NW2d 579 (1986) (“where a person voluntarily assumes the performance of a duty . . ., he is required to perform it carefully, not omitting to do what an ordinarily prudent person would do in accomplishing the task”). Specifically, plaintiff contends that Ford should have provided additional protections for users of its lots, such as a gate and a guard shack at the parking lot entrance. However, in *Scott v Harper Recreation, Inc*, 444 Mich 441, 451-452; 506 NW2d 857 (1993), our Supreme Court stated that suits for failing to prevent all criminal activity on a premises “may not be maintained on the theory that the safety measures are less effective than they could or should have been,” because a contrary policy would punish premises owners who provide some measure of protection, as opposed to those who take no such measures. Because we find plaintiff’s argument to be inconsistent with this general policy consideration, we find no error in the trial court’s decision to grant summary disposition of plaintiff’s claim for negligence.

Relying on the contract to provide security for Rouge, plaintiffs argue that the trial court also erred in granting summary disposition of their negligence and third-party beneficiary claims against Wackenhut. Again, we disagree.

In determining whether a negligence action based on a contract may lie, “the threshold question is whether the defendant owed a duty to the plaintiff that is separate and distinct from the defendant’s contractual obligations. If no independent duty exists, no tort action based on a contract will lie.” *Fultz, supra* at 467. Here, plaintiffs have failed to allege any duty separate and distinct from Wackenhut’s contractual obligations. Consequently, summary disposition of plaintiffs’ claim for negligence in favor of Wackenhut was proper. *Id.*

Because there is no evidence that Wackenhut breached its contract with Rouge, summary disposition of plaintiff’s contractual claim, as an intended third-party beneficiary of that contract, was similarly appropriate. In their complaint, plaintiffs alleged that Wackenhut was contractually obligated to protect Rouge employees and failed to do so in his case, thus breaching the contract between Rouge and Wackenhut. However, while it is not disputed that the contract required that Wackenhut “provide unarmed uniformed security guard services . . . to protect the employees, facilities, and property of the Rouge Steel Company,” it is similarly

uncontested that to meet this obligation Wackenhut was required simply to provide an express number of security officers whose primary function was to “detect, deter, and report” undesirable conduct through a system of stationary postings and random mobile patrols. There is no evidence to support that Wackenhut failed to meet its obligations in this regard. To the contrary, the evidence indicates that Wackenhut security personnel performed at least four randomly timed mobile sweeps of the lot in question on the night plaintiff was shot. That these patrols failed to deter or otherwise prevent the shooting does not amount to a breach of contract. Indeed, as argued by Wackenhut, its agreement with Rouge is devoid of any language guaranteeing the safety of Rouge employees, or even suggesting that Wackenhut would prevent all crime on Rouge property.

Affirmed.

/s/ Joel P. Hoekstra

/s/ Hilda R. Gage

/s/ Kurtis T. Wilder